

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL CURKENDALL,  
Petitioner,

v.

WILLIAM P. MAZZUCA,  
Respondent.

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**DECISION AND ORDER**  
05-CV-688S

1. On September 29, 2005, Petitioner commenced this action seeking federal habeas relief under 28 U.S.C. § 2254. (Docket No. 1).

2. In a Report and Recommendation filed on July 23, 2008, the Honorable Leslie G. Foschio, United States Magistrate Judge, recommended that Petitioner's Petition for a Writ of Habeas Corpus be dismissed. (Docket No. 14).

3. No objections to Judge Foschio's Report and Recommendation were received from either party within ten days of the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

4. This Court has carefully reviewed the Report and Recommendation, as well as the pleadings and materials submitted by the parties, and will accept Judge Foschio's recommendations.

IT HEREBY IS ORDERED that this Court accepts Judge Foschio's July 23, 2008 Report and Recommendation (Docket No. 14) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's Petition for a Writ of Habeas Corpus (Docket No. 1) is DISMISSED with prejudice, there not having been a substantial showing of the denial of a constitutional right.

FURTHER, that a Certificate of Appealability pursuant to 28 U.S.C. § 2253 is DENIED.

FURTHER, that it is hereby certified, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith and leave to proceed as a poor person is therefore DENIED. See Coppedge v. United States, 369 U.S. 438, 82 S.Ct. 917, 8 L.Ed.2d 21 (1962).

FURTHER, that the Clerk of the Court is directed to take the necessary steps to close this case.

SO ORDERED.

Dated: August 15, 2008  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge